

JUDICIAL PROCEDURE, CIVIL

CHAPTER 368

HOUSE BILL NO. 1075
(Legislative Council)
(Interim Committee on Products Liability)

PRODUCTS LIABILITY ACT

AN ACT to restrict and regulate products liability actions by establishing a statute of limitations, granting limited immunity to manufacturers or sellers of products against actions based on products liability, providing tests for determining whether or not a product shall be deemed to be defective or unreasonably dangerous, establishing rebuttable presumptions of freedom from defects, and precluding certain evidence from admission in products liability actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. SHORT TITLE.) This Act shall be known and may be cited as the "North Dakota Products Liability Act".

SECTION 2. DECLARATION OF LEGISLATIVE FINDINGS AND INTENT.)

1. The legislative assembly finds that the number of lawsuits and claims for damages and the amount of judgments and settlements arising from defective products has substantially increased in recent years. Because of these increases, the insurance industry has drastically increased the cost of products liability insurance. The effect of increased insurance premiums and increased claims has increased product cost through manufacturers, wholesalers, and retailers passing the cost of premiums to the consumer. Certain product manufacturers are discouraged from continuing to provide and manufacture certain products because of the high cost and possible unavailability of products liability insurance.
2. Because of these recent trends, and for the purpose of alleviating the adverse effects which these trends are producing in the manufacturing industry, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide products liability insurance.

3. It is the purpose of this Act to provide a reasonable time within which actions may be commenced against manufacturers, while limiting the time to a specific period for which products liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

SECTION 3. STATUTE OF LIMITATION.)

1. There shall be no recovery of damages for personal injury, death, or damage to property caused by a defective product unless the injury, death or damage occurred within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product, where that action is based upon, or arises out of, any of the following:
 - a. Breach of any implied warranties.
 - b. Defects in design, inspection, testing, or manufacture.
 - c. Failure to warn.
 - d. Failure to properly instruct in the use of a product.
2. The provisions of this section shall apply to all persons, regardless of minority or other legal disability, but shall not apply to any cause of action where the personal injury, death, or damage to property occurs within two years after the effective date of this Act.
3. If a manufacturer, wholesaler, or retailer issues a recall of a product in any state, modifies a product, or becomes aware of any defect in a product at any time, and fails to notify or warn a user of the product who is subsequently injured or damaged as a result of the defect, the provisions of subsection 1 shall not bar any action against the manufacturer, wholesaler, or retailer based upon, or arising out of, the defect.

SECTION 4. LIMITATION ON AD DAMNUM CLAUSE.) If a complaint filed in a products liability action against a manufacturer, wholesaler, or retailer prays for a recovery of money in an amount equal to or less than fifty thousand dollars, the amount shall be stated. If a recovery of money in an amount greater than fifty thousand dollars is demanded, the pleading shall state merely that recovery of reasonable damages in an amount greater than fifty thousand dollars is demanded. This section may be superseded by an amendment to the rules of civil procedure adopted after July 1, 1979.

SECTION 5. ALTERATION OR MODIFICATION OF PRODUCT IS DEFENSE TO ACTION.) No manufacturer or seller of a product shall be held liable for any injury, death, or damage to property sustained as a result of an alleged defect, failure to warn or protect, or failure to properly instruct in the use or misuse of that product, where a substantial contributing cause of the injury, death, or damage to property was an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the purpose, use, function, design, or intended use or manner of use of the product from that for which the product was originally designed, tested, or intended.

SECTION 6. DETERMINATION OF DEFECTIVE PRODUCT AND REBUTTABLE PRESUMPTION AGAINST DEFECTS.)

1. No product shall be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.
2. As used in this Act, "unreasonably dangerous" means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer, or user of that product in that community considering the product's characteristics, propensities, risks, dangers, and uses, together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer.
3. There is a rebuttable presumption that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting, and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting, and testing the product were adopted.

Filed March 30, 1979

NOTE: This bill was vetoed by the Governor and subsequently approved by a two-thirds majority of the members of the House of Representatives and the Senate.

CHAPTER 369

HOUSE BILL NO. 1589
(Unhjem, Marsden, Stenehjem)

PRODUCTS LIABILITY ACTIONS REGULATED

AN ACT to regulate products liability actions by providing for the indemnification of the seller by the manufacturer and requiring the manufacturer to assume the defense of the seller in certain actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) For purposes of this Act:

1. "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or consumer. The term includes any seller who has actual knowledge of a defect in a product or a seller of a product who creates and furnishes a manufacturer with specifications, relevant to the alleged defect, for producing the product or who otherwise exercises some significant control over all or a portion of the manufacturing process or who alters or modifies a product in any significant manner after the product comes into his possession and before it is sold to the ultimate user or consumer. The term also includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer. A seller not otherwise a manufacturer shall not be deemed to be a manufacturer merely because he places or has placed a private label on a product if he:
 - a. Does not otherwise specify how the product shall be produced; or
 - b. Does not control, in some significant manner, the manufacturing process of the product,and the seller discloses the actual manufacturer.

2. "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.
3. "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.

SECTION 2. INDEMNITY OF SELLER.) If a product liability action is commenced against a seller, and it is alleged that a product was defectively designed, contained defectively manufactured parts, had insufficient safety guards, or had inaccurate or insufficient warnings; that such condition existed when the product left the control of the manufacturer; that the seller has not substantially altered the product; and that the defective condition or lack of safety guards or adequate warnings caused the injury or damage complained of; the manufacturer from whom the product was acquired by the seller shall be required to assume the cost of defense of the action, and any liability that may be imposed on the seller.

Approved March 13, 1979

CHAPTER 370

HOUSE BILL NO. 1583
(Lardy, Brokaw, Hanson, Melby)

JUDGMENT EXEMPTIONS

AN ACT to create and enact a new section to chapter 28-22 of the North Dakota Century Code, relating to heads of families; and to amend and reenact sections 28-22-01 and 28-22-05 of the North Dakota Century Code, relating to exemptions for heads of families and single persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 28-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEAD OF FAMILY DEFINED.) The phrase "head of a family" as used in this chapter means:

1. The husband or wife when the claimant is a married person.
2. Every person who has residing on the premises with him and under his care and maintenance, any of the following:
 - a. His child or the child of his deceased spouse, whether by birth or adoption.
 - b. A minor brother or sister or the minor child of a deceased brother or sister.
 - c. A father, mother, grandfather, or grandmother.
 - d. The father or mother or grandfather or grandmother of a deceased husband or wife.
 - e. Any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.
3. Every person who provides support for unmarried minor children of a previous marriage of the person, even though

the children do not reside on the premises with the person.

SECTION 2. AMENDMENT.) Section 28-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-01. PROPERTY EXEMPT FROM ALL PROCESS.) Except as hereinafter ~~otherwise~~ provided, the property mentioned in this chapter is exempt to the head of a family, as defined by ~~chapter 47-18-of-the-title-Property~~ section 2 of this Act, from attachment or mesne process and from levy and sale upon execution and from any other final process issued from any court.

SECTION 3. AMENDMENT.) Section 28-22-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-05. EXEMPTIONS OF A SINGLE PERSON.) A In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, a single person, in person or by his agent, in addition-to-his-wearing-apparel, may select from his other personal property, goods, chattels, merchandise, money, or other personal property not exceeding in value the sum of ~~one~~ two thousand five hundred dollars, which shall be exempt.

Approved March 13, 1979

CHAPTER 371

HOUSE BILL NO. 1584
(Lardy, Brokaw, Hanson, Melby)

JUDGMENT EXEMPTION LIMITATION

AN ACT to amend and reenact section 28-22-16 of the North Dakota Century Code, relating to limitations of exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 28-22-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-16. EXEMPTIONS LIMITED IN CERTAIN CASES.) In addition to the absolute exemptions against process:

1. ~~in an action for the collection of the bill of a nurse for professional services, or in an action for the collection of a bill for board, medicine, or attendants furnished patients at any hospital in this state, or in an action for the collection of a bill for groceries and other provisions, there shall be allowed as exempt household and kitchen furniture, stoves, and two cows, the value of which shall not exceed five hundred dollars, and~~

2. ~~On~~ on a judgment for forfeiture of an undertaking or bond or of recognizance taken in criminal cases, there shall be allowed as exempt property, property of any kind to the value of five hundred dollars.

Approved March 3, 1979

CHAPTER 372

HOUSE BILL NO. 1190
(Conmy)

AWARD OF COSTS IN FRIVOLOUS ACTIONS

AN ACT to amend and reenact subsection 2 of section 28-26-01 of the North Dakota Century Code, relating to the awarding of costs in frivolous actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 2 of section 28-26-01 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In civil actions the court may, in its discretion, upon a finding that ~~the--pleading~~ a claim for relief was frivolous, award reasonable actual or statutory costs, or both, including reasonable attorney's fees to the prevailing party. Such costs may be awarded regardless of the good faith of the attorney or client making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in their favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim.

Approved March 15, 1979

CHAPTER 373

HOUSE BILL NO. 1041
(Representatives Unhjem, Stenehjem)

ADMINISTRATIVE CODE DISTRIBUTION

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to distribution of the North Dakota Administrative Code to each member of the legislative assembly; to amend and reenact section 28-32-03.2 of the North Dakota Century Code, relating to printing, sales, and distribution of the administrative code; and providing an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 28-32-03.2 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03.2. PRINTING, SALES, AND DISTRIBUTION OF CODE AND CODE SUPPLEMENT.)

1. The secretary of state shall distribute the code and code supplement, and shall distribute copies of the code, revisions thereto, and the code supplement without charge to the following:
 - a. Governor, one copy.
 - a- b. Attorney general, one copy.
 - b- c. Each supreme court judge, one copy.
 - e- d. Each district court judge, one copy.
 - d- e. Each county auditor of this state, for the use of county officials and the public, one copy.
 - e- f. Supreme court library, one copy.
 - f- g. State library, one copy.

- g- h. Law library of the university of North Dakota, one copy.
- h- i. Secretary of state, one copy.
- i- j. North Dakota legislative council, ~~one-copy~~ two copies.
- k. Each member of the legislative assembly, one copy, upon request.
2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, and the university of North Dakota law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the code supplement.
3. The secretary of state shall make copies of and subscriptions to the code, revisions thereto, and the code supplement available to any person at prices fixed to cover publication and distribution costs.
4. The office of the legislative council shall determine the cost of supplying copies of the code, revisions thereto, and the code supplement. Such cost shall be the approximate cost of printing or duplicating and distributing. However, a uniform price per page or group of pages may be established without regard to differences in the cost of printing different parts of the code, revisions thereto, and the code supplement.
5. All fees collected by the secretary of state shall be deposited in the general fund of the state treasury.
6. The administrative code, revisions thereto, and the code supplement shall be considered sixth class printing under sections 46-02-04 and 46-02-09.

SECTION 2.) A new section to chapter 54-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

CODE DISTRIBUTED TO EACH LEGISLATOR - RETENTION.) Each member of the legislative assembly is entitled to receive a current set of the North Dakota Administrative Code as provided in section 28-32-03.2. The legislator is entitled to current supplements and volumes as provided in section 28-32-03.2 to maintain the code during the legislator's service. The code received by a legislator under this section is not subject to section 46-04-04. After a legislator's service in the legislative assembly is terminated, the secretary of state shall inform the legislator how to obtain a subscription to maintain the legislator's code.

SECTION 3. APPROPRIATION.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000.00, or so much thereof as may be necessary, to the secretary of state for the purpose of distributing copies of the administrative code and code supplement, without charge, to each member of the legislative assembly for the biennium beginning July 1, 1979, and ending June 30, 1981.

Approved March 3, 1979

CHAPTER 374

SENATE BILL NO. 2412
(Jones)

APPOINTMENT OF INTERPRETERS TO ASSIST DEAF

AN ACT to provide for the appointment of interpreters to assist deaf persons in judicial and administrative proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) In this Act, unless the context or subject matter otherwise requires:

1. "Appointing authority" means the presiding judge of any court, the chairman of any board, commission, or authority, and the director or commissioner of any department or agency before which a qualified interpreter is required pursuant to this Act.
2. "Deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding voice communication, or the English language including, but not limited to, a person who is deaf, mute, deaf-mute, or deaf-blind.
3. "Principal party in interest" means a person in any proceeding in which he is a named party or a person with respect to whom the decision or action which may be taken in any proceeding directly affects.
4. "Qualified interpreter" means an interpreter certified by the national registry of interpreters for the deaf or North Dakota association for the deaf, or an interpreter who has been approved by the superintendent of the school for the deaf, or, in the event such an interpreter is not available, any other interpreter whose actual qualifications have otherwise been appropriately determined.

SECTION 2. INTERPRETER REQUIRED.)

1. At all stages of any judicial or administrative proceedings pursuant to chapter 28-32 of the North Dakota Century Code in which a deaf person is a principal party in interest, the appointing authority shall appoint a qualified interpreter to interpret or to translate the proceedings to the deaf person and to interpret or translate his testimony.
2. Immediately after a deaf person is arrested for any alleged violation of criminal law where the penalty may include imprisonment or a fine in excess of one hundred dollars, or both, an interpreter shall be appointed. No attempt to interrogate or take a statement from such person shall be permitted until a qualified interpreter is appointed for the deaf person and then only through the use of the interpreter.

SECTION 3. PROOF OF DISABILITY.) An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of his disability when the appointing authority has reason to believe that the person is not so disabled. In no event is a failure of a party or witness to request an interpreter to be deemed a waiver of the right.

SECTION 4. OATH OF INTERPRETER.) Every interpreter appointed pursuant to the provisions of this Act shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

SECTION 5. COMPENSATION.) An interpreter appointed under the provisions of this Act shall be compensated at a reasonable rate to be determined by the appointing authority, including travel expenses. Nothing in this section shall be construed to prevent any state department, board, commission, agency, or licensing authority or any political subdivision of the state from employing an interpreter on a full-time basis or under contract.

SECTION 6. PRIVILEGED COMMUNICATIONS.) Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged and the deaf person could not be compelled to testify as to the communications, the privilege shall apply to the interpreter as well.

SECTION 7. VISUAL RECORDING.) In any judicial proceeding, the appointing authority, on his own motion or on the motion of a party to the proceedings, may order that the testimony of the deaf person and the interpretation thereof be visually recorded for use in verification of the official transcript of the proceedings.

SECTION 8. COORDINATION OF INTERPRETER REQUESTS.)

1. Whenever an appointing authority receives a valid request for the services of an interpreter or on his own motion, the authority shall request the superintendent of the school for the deaf to furnish the authority with a list of sources of qualified interpreters at the time and place specified by the authority.
2. When requested by an appointing authority to provide assistance in providing an interpreter, the national registry of interpreters for the deaf or the North Dakota association of the deaf or the superintendent of the North Dakota school for the deaf shall supply a list of sources and do all necessary to assist the appointing authority in obtaining a qualified interpreter; providing, however, if the choice of qualified interpreter does not meet the needs of the deaf person, the appointing authority shall appoint another qualified interpreter.

Approved April 7, 1979